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No. 433

In the Supreme Court of the United States

OCTOBER TERM, 1950

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, APPELLANTS

v.

CHAMPLIN REFINING COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES AND THE INTERSTATE COMMERCE COMMISSION

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OPINIONS BELOW

The opinion of the District Court for the Western District of Oklahoma (R. 32) is not yet reported. The report of the Interstate Commerce Commission (R. 6) is found in 274 I. C. C. 409.

JURISDICTION

The final judgment of the three-judge district court was entered on August 28, 1950 (R. 49). The petition for appeal was presented and allowed on October 25, 1950 (R. 50, 51). The jurisdiction

of this Court is conferred by 28 U. S. C. 1253, 2101 (e), and 2325. Probable jurisdiction was noted on January 2, 1951 (R. 555).

STATUTE INVOLVED

The relevant provisions of the Interstate Commerce Act are set forth in Appendix A, *infra* pp. 45–46.

QUESTIONS PRESENTED

In *Champlin Refining Co.* v. *United States*, 329 U. S. 29, this Court held that the Champlin Company is a "common carrier" engaged in "transportation" of oil, within the meaning of Section 1 of the Interstate Commerce Act and that it was, as such a carrier, subject to the valuation requirements of Section 19a of the Act. In the present proceeding the Interstate Commerce Commission found that there had been no change in Champlin's common carrier status under the Act, and it issued an order directing Champlin to file schedules of its transportation rates and charges, as required by Section 6 of the Act, and to file annual and other reports with the Commission and to establish and maintain a uniform system of accounts, as required by Section 20 of the Act. The court below set aside this order upon the ground that Champlin was not, at least for the purposes of these sections, within the class of carriers regulated by the Act. The court also held that application of Section 6 to Champlin

would be a taking of its property without due process in violation of the Fifth Amendment.

The questions presented by the appeal are:

1. Whether Champlin is a "common carrier" gaged in "transportation" by pipe line, within the meaning of Section 1 of the Interstate Commerce Act, and therefore subject to the requirements of Sections 6 and 20 of the Act.

2. Whether the order of the Commission requiring Champlin to file schedules of its charges for transporting refined petroleum products in its pipe line takes its property without due process of law in violation of the Fifth Amendment.

STATEMENT

The Interstate Commerce Commission instituted proceedings early in 1948 to determine whether the appellee (referred to herein as Champlin) is subject to Sections 6 and 20 of the Interstate Commerce Act (R. 63, 70). The proceedings resulted from Champlin's refusal to comply with these sections notwithstanding the holding in *Champlin Refining Co.* v. *United States,* 329 U. S. 29, which is sometimes called the valuation proceeding, that Champlin is, under the definitions of Section 1, a common carrier subject to the provisions of part I of the Act (R. 64–66; Comm. Exs. 1–3, R. 172–176).

After the matter had been submitted to the full Commission on Champlin's exceptions to the proposed examiner's report (R. 7), the Commission

found that the "controlling facts" relating to Champlin's pipe-line operations, including the changed method adopted for quoting prices for products transported through its pipe line, "are the same now as they were" at the time of the valuation proceeding (R. 14), and that Champlin was therefore subject to Sections 6 and 20 of the Act. With respect to Champlin's contention that to require it to comply with these sections "would be tantamount to taking private property for public use in contravention of the fifth amendment," the Commission said that it did not appear that the filing of tariffs and of annual and other reports would be a hardship to Champlin or would deprive it of any traffic or of use of its property free from interference from its competitors (R. 15).[1]

The order entered by the Commission on June 13, 1949, directed Champlin to file with the Commission "annual, periodical, or special reports;" and to institute and maintain "a uniform system of accounts applicable to pipe lines," as required by paragraphs (1)–(4) of Section 20 of the Act and the Commission's orders and regulations thereunder; and to publish and file "tariff sched-

[1] One Commissioner dissented from the finding that Champlin is a common carrier by pipe line subject to the Commission's jurisdiction (R. 17–18) and another Commissioner dissented from the determination that Champlin is subject to the requirements as to filing tariffs imposed by Section 6 (R. 15–17). Two Commissioners did not participate in disposition of the proceeding (R. 18).

ules showing the rates and charges for interstate transportation of refined petroleum products" between points on its own pipe line, and to points on the route of any railroad, pipe-line or water carrier as to which there had been established a "through route and joint rate," as prescribed by Section 6 of the Act (R. 20–21). By its terms, the order was to become effective September 29, 1949 (R. 21).

Shortly before the effective date Champlin brought the present action in the court below seeking to enjoin and set aside the Commission's order (R. 1) and, as provided in 28 U. S. C. 2321, 2325, the case was heard by a three-judge district court. The majority of the court held that Section 1 does not apply to pipe lines which transport only their own products and which are not "common carriers in substance," that Champlin is not in substance a common carrier, and is not subject to Sections 6 and 20 of the Act (R. 39, 40). The court further held that to apply Section 6 of the Act to Champlin would be to take its property without due process in contravention of the Fifth Amendment (R. 36, 40). Judge Murrah, dissenting, was of the opinion that there was no significant distinction between the valuation case and the present one and that this Court's prior decision in 329 U. S. was controlling as to the validity of the Commission's order (R. 40–41).

On this appeal from the district court's judgment enjoining enforcement of the Commission's order, the following facts are believed pertinent:

Champlin is a fully integrated oil company engaged in the production and purchase of crude oil, transportation of crude oil from producing fields to its refinery, conversion of crude into refined products, and transportation and sale of refined products (R. 8–9). It owns and operates approximately 450 miles of crude oil gathering lines in the State of Oklahoma (R. 9) and its refinery at Enid, Oklahoma, which has a daily capacity of 18,000 barrels of crude (R. 12), is the fifth largest refinery in the State.[2]

Champlin has never been able to obtain more than 45% of its crude requirements from its own producing wells (R. 87–88). At the time of the hearing before the Commission in July 1948 its own wells were supplying about 6,000 barrels of crude oil per day and Champlin was unable to purchase the full additional 12,000 barrels required for capacity operation of its refinery (R. 89).

In order to reduce the cost of transporting refined products to purchasers in states north

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[2] The four Oklahoma refineries having greater capacity are (Ex. 3A, R. 484–488):

Company	Location	Capacity
Mid-Continent Pet. Co.	Tulsa	34,000
Continental Oil Co.	Ponca City	26,000
Sunray Oil Co.	Duncan	20,000
Texas Co.	Tulsa	20,000

of Oklahoma, Champlin constructed, and now owns and operates, a six-inch pipe line running from Enid through Hutchinson, Kansas, and Superior, Nebraska, to Rock Rapids, Iowa (R. 90, 112). The line from Enid to Superior, a distance of 256 miles, was completed in 1935, and the 260-mile extension to Rock Rapids was completed in 1940 (R. 8). Champlin also has substantial storage facilities at each of the three pipe-line terminals (R. 8–9). At the time of the Commission hearing its total investment in its products pipe line and appurtenant facilities was approximately $3,230,000 (R. 8).

Champlin markets about one-third of its refined products in Oklahoma and Texas (R. 90). The remaining two-thirds are transported by its pipe line for sale to purchasers located in states north of Oklahoma (*ibid.*). Of the total deliveries from the pipe-line terminals, approximately 2% are from Hutchinson, 35% from Superior, and 63% from Rock Rapids.[5]

Champlin has never carried any but its own products in its pipe line and its line does not connect with any other pipe line (R. 14–15). Pipe lines carrying refined petroleum products, which are frequently called products pipe lines, are

[5] The above percentages are computed from the figures for deliveries from the pipe-line terminals during the last six months of 1947, as shown in Exhibit 12 (R. 502). This is the only information in the record as to deliveries from the respective terminals.

sometimes utilized for common carriage, but many of them, as in the case of Champlin, have been used only to transport products of the pipe-line owner.

Exhibit 3 (Ex. Vol. 2) shows the products pipe lines in the area from our southern to our northern borders and roughly bounded to the west by the Pacific Mountains and to the east by the Mississippi River. The exhibit shows that Champlin's Rock Rapids terminal is adjacent to a common carrier pipe line (that of Great Lakes), but that Superior, the only other terminal which is a substantial market outlet (*supra*, p. 7), is distant from any common carrier line. In the light of this situation, it is not surprising that Champlin's terminal price for a gallon of gasoline was at the time of the hearing 1/8¢ higher at Superior than its price at Rock Rapids, although the latter is 260 miles further from its refinery (R. 107).

Both companies of major size and relatively small concerns have products pipe lines that have not been used for common carriage. One such line is that of Standard Oil (Indiana) running from Chicago, through Minneapolis, to Moorhead, Minnesota. The same company has a line running from near Kansas City to Sioux Falls, South Dakota, with a branch to Des Moines, Iowa. Other "private" lines include Socony's line running from southeastern Kansas to Sioux Falls, with a branch to Kansas City, Magnolia's line

from Dallas to Oklahoma City, Shell's line running east from near St. Louis, Sinclair's line from Corpus Christi, Texas, and Texas' line running northeasterly from San Antonio, Texas. As to relatively small companies, the Derby Oil Co. has a line in Kansas from McPherson to Wichita and the National Cooperative Association from McPherson to Council Bluffs, Iowa. (Ex. 3, Ex. Vol. 2.)

The jobbers who purchase products transported through Champlin's pipe line provide their own transportation (by truck or rail) to their bulk depots (R. 107). The jobbers' places of business ordinarily are not at the terminals, and Champlin fixes what amounts to a destination price by making a reduction from the terminal price designated "allowance to meet competitive prices" (R. 108; Ex. 18, R. 523; Ex. 19, R. 528). This reduction or allowance is made so that the delivered cost of the gasoline will be as low as the jobber's delivered cost on purchases made from competitors of Champlin (R. 108–109).

The foregoing basis of quoting prices, i. e., employing a terminal price with a deduction therefrom to make the price on each sale conform to the market price at the purchaser's place of busi ss (the destination of the particular sale), was put into effect on May 10, 1948, several months after this proceeding started (R. 120–121). It represents a change in form from the basis of quoting prices in effect at the time of the

valuation proceeding. Under the prior method, the spot price (as distinguished from the price of products sold under contract on an annual basis) was computed by taking Champlin's price f. o. b. its Enid refinery and adding thereto a "differential" equal to the amount of the through rail rate from Enid to purchaser's destination minus the charges for local transportation from the applicable pipe-line terminal to destination, which short-haul transportation the purchaser either paid for or provided (R. 9–10, 107).[4] Such "differential," included in the price charged by Champlin, obviously did not represent or purport to represent the cost (or the cost plus a reasonable profit) of the pipe-line transportation from Enid to the applicable pipe-line terminal.

Due to competitive and other conditions, departures from the prices arrived at in accordance with the foregoing formula were substantial and frequent (329 U. S. 29, at p. 34). In the present proceeding a Champlin officer testified that, from the outset of its pipe-line operations, competitive conditions made it impossible to use the differential based upon rail rates in sales to purchasers in most of the places within the marketing area served by its pipe line (R. 120). He further testified that by May 9, 1948, just prior to the change in method of pricing, the actual differen-

[4] For further detail as to the prior pricing basis, see *Champlin Refining Co., Valuation of Pipe Line*, 49 Val. R. 542, 543–544.

tial charged customers differed from the rail-based differential in every place in which Champlin marketed products transported through its pipe line (*ibid.*).[5]

The Interstate Commerce Commission found that under Champlin's present pricing method its terminal price "takes into account the total costs of operating respondent's [Champlin's] facilities, including the pipe line" (R. 10). It further found that the change in pricing method "was a change in name more than in substance, the resulting terminal price, now as under the differential method, generally being the price made necessary by competition and, as such, including the transportation cost or as much of it as was or is permissible under the prevailing competitive conditions" (R. 11).

SPECIFICATION OF ERRORS TO BE URGED

The district court erred—

1. In holding that Champlin Refining Company is not a common carrier by pipe line within the purview of Section 1 of the Interstate Commerce Act.

2. In holding that Champlin is not engaged in "transportation" within the meaning of Section 1 (1) (b) of the Interstate Commerce Act.

3. In holding that Champlin is not required to comply with the provisions of the order of the

[5] See also Exhibit 20, first column and last two columns (R. 537–549).

Interstate Commerce Commission entered on June 13, 1949, directing Champlin to file with the Commission annual, periodical or special reports, and to institute and maintain a uniform system of accounts applicable to pipe lines, as required by Section 20 of the Interstate Commerce Act and the orders and regulations of the Commission thereunder.

4. In holding that Champlin is not required to comply with the provisions of the order of the Commission of June 13, 1949, directing Champlin to publish and file schedules of rates and charges for interstate transportation of refined petroleum products, pursuant to Section 6 of the Interstate Commerce Act.

5. In holding that enforcement of the Commission's order of June 13, 1949, would violate the Fifth Amendment to the Constitution of the United States.

6. In failing to adopt the proposed findings of fact and conclusions of law submitted by the United States and the Interstate Commerce Commission, and in adopting the proposed findings of fact and conclusions of law submitted by Champlin.

7. In holding that the Commission's order of June 13, 1949, is invalid and in perpetually enjoining enforcement of this order.

SUMMARY OF ARGUMENT

I

Sections 6 and 20 of the Interstate Commerce Act apply to common carriers which are subject to the Act. Such common carriers are defined in Section 1, and the sole issue of statutory construction which this case presents is whether Champlin is, under the definitions of Section 1, a common carrier subject to the Act.

1. In *Champlin Refining Co.* v. *United States*, 329 U. S. 29, this Court held that Champlin is a common carrier subject to the provisions of the Interstate Commerce Act. The parties and the significant facts are the same as in the prior case, and there has been no intervening change in controlling legal principles. The doctrine of collateral estoppel therefore bars Champlin from relitigating the issue previously decided.

2. This Court has uniformly held that the definition of the term "common carrier" in Section 1 of the Act includes a pipe-line company, such as Champlin, engaged in transporting only goods of which it is the owner.

3. Under Section 1, a pipe-line company is subject to the Act if it is engaged in the "transportation" of oil by pipe line. In the prior *Champlin* case there was division among the members of the Court as to whether Champlin's pipe-line operations constituted such transportation. This division stemmed from the holding in

the *Pipe Line Cases*, 234 U. S. 548, as to the Uncle Sam Oil Company—that there is not the transportation contemplated by the Act when a pipe line is built and used solely to carry crude oil from the wells of the pipe-line owner to his refinery. The majority in the *Champlin* case held that the holding as to the Uncle Sam Company concerned a pipe line which merely linked one step in production with another and that it would "expand" that holding to apply it to Champlin's pipe line, which was employed to transport products, after manufacturing processes had been completed, for the purpose of sale in interstate markets "at the greatest economic advantage." The later formal change in the method by which Champlin computes sales price clearly does not affect its status as a common carrier under the Act. In this case, as in the prior one, the character of Champlin's pipe-line operations and the competitive advantage it derives in interstate markets from these operations, require the holding that the Act is applicable to it.

II

The district court concluded that the provisions of the Commission's order directing Champlin to file schedules of its charges for transporting products through its pipe line is an implicit requirement that it transport goods for others, and that such a requirement constitutes

a taking of Champlin's property without due process. The Government submits that the due process question, if any, which is before the Court is whether subjecting Champlin to the obligation to carry for others for compensation, under circumstances not now disclosed, is in and of itself violative of due process requirements. The question of any specific injury to Champlin from such required carriage "is too premature and hypothetical to warrant [present] consideration" (329 U. S. at p. 35).

Champlin built its pipe line many years after enactment of the pipe-line provisions of the Interstate Commerce Act. By its voluntary action, therefore, Champlin subjected its pipe line to the limitations on pipe-line operations imposed by the statute. In these circumstances enforcement of the statutory limitations is not violative of due process. This question is set at rest by the decision in the *Pipe Line Cases, supra,* as construed and applied in *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125. In the *Pipe Line Cases* this Court said with reference to the constitutionality of the Commission's order to file tariff schedules: "So far as the statute contemplates future pipe lines and prescribes the conditions under which they may be established there can be no doubt that it is valid." In the *Pierce Oil* case this Court, in unanimously upholding the validity of a requirement of carriage for

others imposed under state law upon a subsequently-constructed pipe line, said that the contention that this violated due process "must be pronounced futile to the point of almost being frivolous."

ARGUMENT

I

The Interstate Commerce Act authorizes the order of the Commission directing Champlin to comply with Sections 6 (1) and 20 (1)–(4) of the Act

Introductory

The order of the Interstate Commerce Commission directing Champlin to comply with Sections 6 (1) and 20 (1)–(4) of the Interstate Commerce Act is plainly authorized by the Act if Champlin is a common carrier subject to the provisions of part I of the Act.[6] Section 6 (1) provides: "Every common carrier subject to the provisions of" part I shall file and post schedules of its transportation rates and charges (see *infra*, pp. 45–46). Paragraphs (1)–(4) of Section 20 grant the Commission authority to require "carriers" to

[6] Part I, which includes Sections 1, 6 and 20, embodies the Interstate Commerce Act of February 4, 1887, as it existed prior to its division into parts. Part II, providing for regulation of motor carriers, was added by the Act of August 9, 1935, 49 Stat. 543 (49 U. S. C. 301–327). Part III, providing for regulation of water carriers, was added by the Act of September 18, 1940, 54 Stat. 929 (49 U. S. C. 901–923). Part IV, providing for regulation of freight forwarders, was added by the Act of May 16, 1942, 56 Stat. 284 (49 U. S. C. 1001–1022).

file annual and other reports and to maintain a uniform system of accounts, and paragraph (8) provides that, as used in Section 20, "the term 'carrier' means a common carrier subject to" part I of the Act (see *infra*, p. 46).

Section 1 of the Act defines the term "common carrier" as used in part I and the circumstances under which such a carrier is subject to the provisions of part I. The question of statutory construction presented in this case therefore involves an interpretation of Section 1 of the Act, not of Sections 6 and 20. This Court has considered only the scope and meaning of Section 1 when passing upon the question of application of regulatory provisions of the Interstate Commerce Act to pipe-line companies. *Pipe Line Cases*, 234 U. S. 548, 557–560; *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, 144–146; *Champlin Refining Co.* v. *United States*, 329 U. S. 29, 32–34. See also dissenting opinion in the *Champlin* case, at p. 39.

1. *Champlin is estopped from denying that it is a "common carrier" engaged in "transportation" by pip line, within the meaning of Section 1 of the Interstate Commerce Act*

In *Champlin Refining Company* v. *United States*, 329 U. S. 29, the principal issue determined by the Interstate Commerce Commission, the district court, and this Court was whether or not Champlin, the present appellee, was a "common carrier" engaged in "transportation" by pipe line within the meaning of Section 1 of the

Interstate Commerce Act. 329 U. S. 29, 32–34, 39. The majority and the dissenting Justices of this Court were in agreement that the answer to that question was determinative of whether Section 19a of the Act requiring the submission of information for valuation purposes was applicable to Champlin. Under the well-established doctrine of collateral estoppel, that question may not be relitigated in a subsequent proceeding between the same parties involving the same pipeline operations.

The classic statement of the rule, recently quoted with approval by this Court in *United States* v. *Munsingwear*, 340 U. S. 36, 38, is found in *Southern Pacific Railroad* v. *United States*, 168 U. S. 1, 48–49, where the Court stated:

> The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace

> and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them.

In a more recent case, *Commissioner* v. *Sunnen*, 333 U. S. 591, this Court reexamined the problem, and adverted to the distinction between *res judicata*, where an issue once decided is attempted to be raised in the same cause of action, and collateral estoppel, where the same issue is raised in a different cause of action between the same parties. The Court said (pp. 597–598):

> But where the second action between the same parties is upon a different cause or demand, the principle of *res judicata* is applied much more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but "only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered." *Cromwell* v. *County of Sac*, *supra*, 353. And see *Russell* v. *Place*, 94 U. S. 606; *Southern Pacific R. Co.* v. *United States*, 168 U. S. 1, 48; *Mercoid Corp.* v. *Mid-Continent Co.*, 320 U. S.

661, 671. Since the cause of action involved in the second proceeding is not swallowed by the judgment in the prior suit, the parties are free to litigate points which were not at issue in the first proceeding, even though such points might have been tendered and decided at that time. But matters which were actually litigated and determined in the first proceeding cannot later be relitigated. Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel. In this sense, *res judicata* is usually and more accurately referred to as estoppel by judgment, or collateral estoppel. See Restatement of the Law of Judgments, §§ 68, 69, 70; Scott, "Collateral Estoppel by Judgment," 56 Harv. L. Rev. 1.

Since the decision of this Court in the *Champlin* case, *supra*, there has been no change in the law and no intervening decision to make the application of the estoppel unjust. The only question, therefore, is whether there has been any change in the factual situation which will justify a reexamination of the issue there decided.

The orders by the Interstate Commerce Commission in the two cases were based on facts developed in hearings before that body, the first being in 1941 and the second in 1948. The Commission specifically found that the controlling facts as to Champlin's pipe-line operations were the same at the time of the second hearing as

they were at the time of the first (R. 14). Indeed, in the second proceeding the parties, by stipulation, incorporated in the record the testimony taken in the first proceeding and certain of the exhibits then introduced.[1]

As the Commission and the court below noted, Champlin has altered its former practice of quoting prices f. o. b. Enid, Oklahoma, and then adding a differential roughly equivalent to rail transportation from Enid to the purchaser's location. Prices are now quoted f. o. b. the pipe-line terminals. The Commission found that this was a change in form rather than in substance since Champlin had always adjusted its prices to meet competitive conditions in local markets (R. 11). As we show later (*infra*, pp. 33–36), the formula by which Champlin computed price at the time of the valuation proceeding was not a controlling factor in the decision of this Court in the prior *Champlin* case that Champlin is a "common carrier" engaged in "transportation" by pipe line within the meaning of Section 1 of the Interstate Commerce Act. Furthermore, Champlin itself argued when it was before this Court in the prior proceeding that use of the differential in computing price had no significance as a charge for transportation and therefore no significance on the

[1] Transcript of Commission proceedings, pp. 510–511, filed as part of the record on this appeal but not printed, which may nevertheless be referred to by any party (R. 552).

ultimate question as to whether Champlin was within the provisions of Section 1.[8] The dissenting Justices in the prior case likewise regarded Champlin's pricing method as irrelevant to this issue. The dissenting opinion states (329 U. S. at p. 39):

> Nor can we see any significant distinction from the *Uncle Sam* case in the practice of Champlin to use frequently the freight rate from Enid to the final destination as a measure of the addition to Enid refinery, f. o. b. price that it will charge at its distributing tanks. This practice is departed from to meet competition. Naturally some transportation cost must be added to the refinery price for deliveries elsewhere. How much it is or how it is calculated does not seem to us to bear upon the question of whether Champlin is "a common carrier engaged in the transportation of oil" within the scope of the act.

It is therefore submitted that since the issue of whether Champlin falls within the provisions of Section 1 of the Act is identical with that in the prior case, since the parties are the same, since the significant facts are identical, and since there has been no intervening change in statutory law or in the judicial construction of it, the judgment in the prior case operates as an estoppel with respect to the issue there decided, that Champlin

[8] See Champlin's reply brief in No. 75, October Term, 1945, pp. 21–25.

is a "common carrier" engaged in "transportation" of oil, within the meaning of Section 1 of the Interstate Commerce Act.

2. Pipe-line companies engaged in transporting only their own goods are within the statutory definition of "common carrier"

Assuming, *arguendo*, that Champlin is not estopped from raising the issue as to the application of the Act to it, nevertheless this Court's prior decision is correct and Champlin is a "common carrier" within the meaning of Section 1 of the Interstate Commerce Act. Section 1 provides that the provisions of part I of the Act "shall apply to common carriers engaged in * * * transportation of oil or other commodity * * * by pipe line" from one state to another. The term "common carrier" as used in part I of the Act is defined to include "all pipe-line companies." See Appendix A, *infra*, p. 45.

There could hardly be words more categorical than "all pipe-line companies." On the face of the statutory definition, it applies to a company such as Champlin operating a pipe line through which it transports only goods of which it is the owner. Consideration of the origin of the statutory definition and of the interpretation placed upon it by this Court further confirms this conclusion.

Pipe-line companies were first brought under the Interstate Commerce Act by the Hepburn Act of June 29, 1906, 34 Stat. 584. That Act

amended Section 1 of the Interstate Commerce Act so that it should read in part as follows:

> That the provisions of this Act shall apply to *any* corporation or *any* person or persons engaged in the transportation of oil or other commodity * * * by means of pipe lines, * * * who shall be considered and held to be common carriers within the meaning and purpose of this Act, * * *. [Italics supplied.]

The *Pipe Line Cases*, 234 U. S. 548, involved the validity of an order of the Interstate Commerce Commission which directed various companies engaged in transporting oil by pipe line to file schedules of their rates and charges for transportation of oil. Each of the companies contesting the order had consistently limited its transportation to oil of which it was the owner. This Court, in upholding the validity of the order as applied to such companies, noted (pp. 558–559) that the very purpose of the amendment to Section 1 was to bring under the requirements of the Act pipe-line companies of this character. And the Court said (p. 560) that to hold that the amendment does not apply to such companies would be to "empty the act" of all practical effect and meaning. With reference to the specific language of the amended section, the Court said (pp. 559–560):

> The provisions of the act are to apply to any person engaged in the transportation

> of oil by means of pipe lines. The words "who shall be considered and held to be common carriers within the meaning and purpose of this act" obviously are not intended to cut down the generality of the previous declaration to the meaning that only those shall be held common carriers within the act who were common carriers in a technical sense, but an injunction that those in control of pipe lines and engaged in the transportation of oil shall be dealt with as such.

The legislative history of the pipe-line amendment, the significant portions of which are set forth in Appendix B, *infra*, pp. 47–49, incontestably establishes that it was the purpose of Congress to bring under the Act pipe-line companies which had not previously assumed the obligation of common carriage.

Section 1 was recast in its present form by the Transportation Act of 1920, but without changing the meaning of the pipe-lines provisions of the Hepburn Act. In *Valvoline Oil Co.* v. *United States*, 308 U. S. 141, the Court held that the statute as it now stands applies, as it had previously, to a pipe-line company engaged in transporting only oil of which it is the owner. The Court said (p. 144) that "all pipe-line companies" are defined as being within the term "common carrier" and that this definition "is decisive" unless limited by the subsequent words bringing within the common-carrier definition "all

persons * * * engaged in such transportation * * * as common carriers for hire." The Court held that the subsequent words did not limit "the generality of the first clause as to pipe-line companies" since this was the construction placed upon similar provisions of the Hepburn Act and since in this respect the Transportation Act of 1920 made "a change in language but * * * none in meaning." 308 U. S. at pp. 145–146.

3. Champlin is engaged in "transportation" by pipe line within the meaning of Section 1 of the act

In *Champlin Refining Co.* v. *United States*, 329 U. S. 29, all members of the Court were in agreement that the statutory definition of common carrier includes a pipe-line company which has carried and offered to carry only its own goods and products. See majority opinion (p. 32), dissenting opinion (p. 37). The issue on which the Court divided was as to whether Champlin's pipe-line operations are "transportation" within the meaning of Section 1 of the Act. That section states that the provisions of part I of the Act shall apply to "common carriers engaged in * * * transportation of oil or other commodity" by pipe line.

The division among members of the Court in the *Champlin* case stemmed from a difference of view concerning the effect of the holding in the *Pipe Line Cases* as to the Uncle Sam Oil Com-

pany. It is therefore appropriate to examine the earlier decision from the standpoint of its relation to the issue before the Court in the *Champlin* case.

In the *Pipe Line Cases* the Court considered the statute and its constitutionality primarily with reference to pipe-line companies which had been parties to the combination declared illegal in *Standard Oil Co.* v. *United States,* 221 U. S. 1. The Court pointed out that the language of the statute clearly applied to companies such as these which, prior to the legislation, had refused to carry oil for others, and that it was this situation which had led Congress to bring pipe-line companies under the Interstate Commerce Act. The Court held that these companies were within the Act and that the Act, as applied to them, was constitutional.

The Court then turned to a consideration of the Uncle Sam Oil Company, which had a pipe line "used for the sole purpose of conducting oil from its own wells to its own refinery," the former being in Oklahoma and the latter in Kansas. The Court, in holding the Commission's order invalid as to this company, said (p. 562):

> It would be a perversion of language, considering the sense in which it is used in the statute, to say that a man was engaged in the transportation of water whenever he pumped a pail of water from his well to his house. So as to oil. When, as in this

> case, a company is simply drawing oil from its own wells across a state line to its own refinery for its own use, and that is all, we do not regard it as falling within the description of the act, the transportation being merely an incident to use at the end.

Champlin's situation differs radically from that of the Uncle Sam Company. Champlin's pipe line transports petroleum products from its refinery at Enid, Oklahoma, for sale to purchasers in other states. The line is thus used as a medium of transportation to obtain a better net realization from sale of the transported goods in distant markets than could be obtained by marketing them at the point from which they start or by using other means of transportation to reach the distant markets. This is the very end served by the pipe-line companies held to be subject to the Act in the *Pipe Line Cases*. Congress brought pipe lines under the Act in order to make this low-cost form of transportation available to others than the pipe-line owner so that they might sell in the wider markets reached and served by pipe line. The purpose of the pipe-line provisions of the Act was to bar the pipe-line owner's monopolization of this means of transportation, by imposing the duty to carry for others. See 234 U. S. at pp. 558–559. Such purpose clearly embraces Champlin's pipe line, which provides a low-cost medium for transporting goods for sale in distant and more favorable markets.

The Uncle Sam Company, in contrast, had oil wells in one place and a refinery for processing the output of its wells in another place, and constructed a pipe line for the sole purpose of linking the wells, from which it drew the oil which it intended to convert into refined products, with the manufacturing plant built to effect such conversion. The pipe line thus was, in a very real sense, a plant facility, and it is not without significance that the pipe line built for this use was only 60 miles long.[9]

In the *Champlin* case this Court concluded (329 U. S. at p. 33) that "it would expand the actual holding" as to the Uncle Sam Company in the *Pipe Line Cases* "to apply its conclusion to Champlin." The grounds for this conclusion were briefly stated as follows (pp. 33–34):

> The controlling fact under the statute is transporting commodities from state to state by pipe line. * * * While Champlin technically is transporting its own oil, manufacturing processes have been completed; the oil is not being moved for Champlin's own use. These interstate facilities are operated *to put its finished products in the market in interstate commerce at the greatest economic advantage.* [Italics supplied.]

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[9] See record as to the Uncle Sam Oil Company incorporated in the record in the *Champlin* case (Record in No. 75, October Term, 1945, pp. 571, 613).

The Court's statement that "manufacturing processes have been completed" as to products transported through Champlin's pipe line applies equally to the situation existing at the time of the present proceeding. No different conclusion can be drawn from the testimony of Champlin's officer that it has "always done some blending and treating" of its products at the pipe-line terminals, that it is "now constructing Ethyl plants at the Superior and Rock Rapids terminals," that these plants when completed, will be used for the purpose of further processing, treating and preparing for sale approximately 20% of the gasoline stored at these points (R. 127).[10] We submit that the "blending and treating" referred to in this vague and indefinite testimony is merely a minor step incident to favorable sale of goods as to which "manufacturing processes have been completed," and is not even remotely comparable to the refining operations by which crude oil is converted into gasoline and other refined products. In any event, moreover, some 80% of the products transported reach purchasers without being subjected even to "blending and treating."

The words of the statute, "engaged in * * * transportation of oil * * * by pipe line," are

[10] See also the district court's finding based on this testimony (R. 42).

general in their application.[11] The ruling as to the Uncle Sam Company carved out an implied exception as to a pipe line used solely to link one step in production (drawing crude oil from the earth) with a second step (converting the crude into refined products). In the absence of strong affirmative reasons therefor, the "actual holding" as to the Uncle Sam Company should not be expanded by engrafting upon the broad phraseology of the statute further implied limitations and exceptions.

In the instant case the Commission stated in its report; "Apparently common-carrier pipeline transportation is available to any small refiner in this area desiring such transportation" (R. 12). It is not to be assumed from this statement that refiners suffer no disadvantage when denied access to pipe lines not operated as common carriers. In the first place, some of these lines serve areas not served by common-carrier lines (Ex. 3, Ex. Vol. 2). In the second place, such lines may be much closer to a refinery than any common-carrier line.[12] In the third place, the Commission's statement as to availability was based on the testimony of Champlin's officer that Exhibit 3 "shows that if any small refiner in

[11] The wording of the Hepburn Act was substantially identical, "engaged in the transportation of oil * * * by means of pipe lines."

[12] See the Magnolia line, with reference to refiners located to the west of it, and Champlin's line with reference to the refinery at Phillipsburg, Kansas (Ex. 3, Ex. Vol. 2).

this area desires common carrier pipe line transportation, such transportation is available to it *by the building of a connecting line*, as Sunray, Kanotex and Wilcox have done" (R. 94). The witness described this line as originating at Duncan, Oklahoma, and running east to Allen and then north to connect with the Great Lakes common-carrier pipe line near Cushing, Oklahoma (R. 95), a line which appears to be nearly 200 miles long.[13] Common-carrier pipe-line transportation dependent upon construction of many miles of connecting line can be regarded as "available" in only a very limited sense.

The cost of transporting oil and refined petroleum products by pipe line is less than half the cost of transportation by rail.[14] Champlin, like other similarly situated pipe-line companies, is therefore in a position to profit from exclusive use of its pipe line to obtain a preferred position in markets which the pipe line serves, in much the same way that the pipe-line companies held to be within the Act in the *Pipe Line Cases* (234 U. S. 548) were able, because of exclusive use of their pipe lines, to exercise substantial control over market price of crude oil in producing fields

[13] As shown in Exhibit 3, this line is about three-fourths the length of Champlin's line from Enid to Superior, a distance of 256 miles (*supra*, p. 7).

[14] Cook, *Control of the Petroleum Industry by Major Oil Companies*, Temporary National Economic Committee, Monograph No. 39 (1941), pp. 19, 37; Pogue, *Economics of the Petroleum Industry*, Part 14 T. N. E. C. Hearings 7457, 7476.

for which their pipe lines were outlets. Champlin's pipe line thus comes within the purpose of the pipe-line provisions of the Hepburn Act, to prevent the monopoly power in local markets resulting from exclusion of others than pipe-line owners from this low-cost form of transportation.[15] We submit that there is no difference in principle between exclusive pipe-line use giving monopoly power at points where transportation starts, as in the case of the pipe-line companies which were part of the early Standard Oil combine, and exclusive pipe-line use giving monopoly power at points where transportation ends, as in the case of Champlin.[15a]

Champlin's pipe-line operations at the time of the hearing in the instant case were essentially the same as they had been at the time of the valuation proceeding (*supra*, pp. 3–4, 11). Under this Court's decision in the prior *Champlin* case Champlin is, therefore, subject to the provisions of the Interstate Commerce Act unless Champlin's subsequent change in the formula by which it computed sales prices for products moved through its pipe line requires a different result. Neither the Commission nor the court below regarded this change as of significance. But the important point is that this Court's decision in

[15] See Whitesel, *Recent Federal Regulation of the Petroleum Pipe Line as a Common Carrier*, 32 Cornell Law Quarterly 336, 341, 349–352.

[15a] See Note, *Public Control of Petroleum Pipe Lines*, 51 Yale L. Jour. 1338, 1340, 1345, 1347–1348.

the *Champlin* case did not rest upon the pricing method then used by Champlin.

In that case this Court said (p. 34) that examination of Champlin's pricing methods "supports the view" that it is engaged in "transportation" within the meaning of the statute. Champlin's method of pricing, as described by the Court, was that price at the terminal points included f. o. b. price at the Enid refinery and a "differential" which was the through railroad freight rate from Enid to final destination less the transportation charge (paid by the purchaser) from the pipeline terminal to final destination. The Court said that even though departures from the calculated differential were substantial and frequent, "we think this practice points up a significant distinction from the *Uncle Sam* case."

The Court thus regarded Champlin's pricing method as further confirming the conclusion that Champlin used its pipe line to put its goods in interstate markets "at the greatest economic advantage" and that such use constituted a "significant distinction" from the *Uncle Sam* case. But the decision that Champlin was a "common carrier" subject to the Act within the meaning of Section 1 was not rested upon its use of the pricing method described in the Court's opinion. A decision resting upon this ground would have required determination of the question whether price was generally computed in accordance with the described method or whether such method was

largely a paper formula—a question which the Court treated as immaterial.

Whether or not Champlin is engaged in "transportation" within the meaning of the Act depends upon the character of its pipe-line transportation, not upon the formula used in computing the selling price of transported products. This Court in the prior *Champlin* case gave attention to the pricing formula which had been employed merely because it pointed up "a significant distinction" between Champlin's pipe-line transportation and the kind of intra-plant transportation involved in the *Uncle Sam* case, where the transportation linked one step in production with another in order to complete manufacture of the product intended for sale in commerce. Champlin's pricing method was significant in that it dramatized the underlying economic facts with reference to Champlin's use of its pipe line—that the line was and is used to transport petroleum products for purposes of sale and that the cost of such transportation is necessarily a factor in sales price, as the Interstate Commerce Commission expressly found (R. 11). The underlying economic facts remain the same whether or not the charge for transportation is identified as such in the pricing formula employed.

The formula making transportation rates a factor in computing sales price would have had significance even though, prior to institution of the valuation proceeding Champlin had discontinued

use of this formula. We submit that this Court's decision in the *Champlin* case does not mean that the pricing formula to which the Court refers made Champlin a common carrier subject to the Act at that time and until May 9, 1948, so that Champlin ceased to be a common carrier within the meaning of the Act on and after May 10, 1948, when this formula was no longer used.[16]

II

The Commission's order does not take Champlin's property in violation of the due process requirements of the Fifth Amendment

In the *Champlin* case the Court found it unnecessary to pass upon Champlin's contention that the Act, if construed to mean that Champlin was within the statutory definition of common carrier, would violate the due process clause by imposing upon a private carrier the obligations of a common carrier. The Court said that this objection was "too premature and hypothetical to warrant consideration." The Court pointed out that the order directing compliance with the valuation provisions of Section 19a did not change Champlin's "obligations to any other

[16] We deem Champlin's purpose in changing its pricing formula irrelevant, i. e., whether the change was made in order to lay a foundation for the claim that Champlin was no longer subject to the Act or whether it was made in order to employ a formula corresponding more closely to the prices actually charged.

company or person" and that to require Champlin "to provide information about a subject within the power possessed by Congress and delegated to the Commission * * * cannot be considered a taking of property even if it arouses appellant's [Champlin's] premonitions." 329 U. S. 29, at p. 35.

In *Valvoline Oil Co.* v. *United States,* 308 U. S. 141, 146–147, the Court likewise so ruled with respect to a Commission order directing a pipe-line company to comply with Section 19a.

Under these decisions, the Commission's order in the instant case plainly presents no constitutional question requiring consideration insofar as the order compels compliance with Section 20 of the Interstate Commerce Act. The filing of "annual, periodical, or special reports," as required by paragraphs (1)–(2) of Section 20, is in all respects analagous to the furnishing of information under the valuation provisions of Section 19a.

The direction to maintain a uniform system of accounts pursuant to paragraphs (3)–(4) of Section 20 likewise gives rise to no due process question ripe for consideration. The commerce power of Congress "is not dependent on the technical common carrier status but is quite as extensive over a private carrier" (329 U. S. 29, at p. 35) and, from the due process angle, prescription of a uniform system of accounts does not change Champlin's obligations to any other

person. There is, moreover, ample statutory precedent, never seriously questioned on grounds of constitutionality, for requiring those who carry goods in interstate commerce, but not as a common carrier, to maintain a uniform system of accounts. For example, a contract carrier by motor vehicle may not engage in interstate transportation (except as to pre-statutory bona fide operations) without obtaining a permit therefor from the Interstate Commerce Commission,[17] and the Commission shall attach to such permit such terms and conditions as are necessary to provide for establishing a "uniform system[s] of accounts."[18]

There remains the question of what, if any, due process issue is presently posed by the part of the Commission's order directing the filing of schedules of Champlin's charges for interstate transportation of oil, as required by Section 6 of the Act. This is precisely what was directed by the order of the Commission which was under attack in the *Pipe Line Cases*, where the Court did pass upon constitutionality from the standpoint of due process (234 U. S. 548, at p. 561).

The required filing of tariff schedules certainly bears a close relation to the duty, under Section 1 (4) of the Act, to furnish transportation to

[17] Sec. 209 (a) of Interstate Commerce Act, 49 U. S. C. 309 (a).

[18] Secs. 204 (a) (2), 209 (b) of Interstate Commerce Act, 49 U. S. C. 304 (a) (2), 309 (b).

others upon reasonable request therefor. It is submitted therefore that it is appropriate for the Court to pass upon the question whether the due process limitations of the Fifth Amendment are violated if Champlin may be required, under any circumstances, to transport goods other than its own. But the Court, in ruling on constitutionality, may not properly assume that the Commission's order will require transportation for other persons for which Champlin will not be fully compensated.

Champlin may protect itself against unreasonable tenders of products for transportation, by limitations and conditions incorporated in the tariffs filed in compliance with Section 6 of the Act.[19] A carrier's tariffs and operating rules may be adapted to the nature and character of the particular traffic involved or other special circumstances.[20] But the point we emphasize is that

[19] The Interstate Commerce Commission has found that 25,000 barrels is a reasonable minimum-tender requirement by common-carrier gasoline pipe lines when normal transportation service is demanded, and 5,000 barrels a reasonable minimum requirement for delayed shipment, i. e., for delay until 25,000 barrels of gasoline of the same specifications have been accumulated at the receiving point. *Petroleum Rail Shippers' Assn.* v. *Alton & Southern R. R.*, 243 I. C. C. 589, 657–658, 665 (1941).

[20] Tariffs and operating rules covering transportation of livestock, explosives, circuses, etc., obviously may differ widely in their provisions from those applicable to transportation of commodities such as stones or bricks. See *Davis* v. *Henderson*, 266 U. S. 92; *Bodine & Clark Livestock Commission Co.* v. *Great Northern Ry. Co.*, 63 F. 2d 472 (C. A. 9), certiorari denied, 290 U. S. 629.

the question of injury to Champlin from required carriage of goods for others "is too premature and hypothetical to warrant consideration on this record." See *Champlin* case, 329 U. S. at p. 35.

We submit, therefore, that the only constitutional question now before this Court is whether subjecting Champlin to the obligation to carry someone else's goods for compensation, under circumstances not now disclosed or determined, is in and of itself a taking of property without due process, upon the theory that imposition of such an obligation constitutes an enforced change in the nature of the business undertaken by Champlin. The constitutionality of such requirement is clearly set at rest by the decision in the *Pipe Line Cases,* as applied and construed in *Pierce Oil Corp.* v. *Phoenix Refining Co.*, 259 U. S. 125.

Champlin did not construct its interstate pipe line until long after adoption of the pipe-line provisions of the Hepburn Act of June 29, 1906, making interstate pipe-line companies subject to the provisions of the Interstate Commerce Act. By its own voluntary act, therefore, Champlin subjected its property to the conditions imposed by the statute and may not now be heard to say that their enforcement constitutes a violation of due process. In the *Pipe Line Cases,* Mr. Justice Holmes, speaking for the Court, said (p. 561):

> So far as the statute contemplates future pipe lines and prescribes the conditions upon which they may be established there

> can be no doubt that it is valid. So the [constitutional] objection is narrowed to the fact that it applies to lines already engaged in transportation.

In the *Pierce Oil* case, *supra,* the Oklahoma statutes dealing with pipe lines provided that no corporation (domestic or foreign) should have the right to engage in transportation of crude petroleum through pipe lines within the state "for hire or otherwise" except as authorized therein, and that every corporation engaged in such business under the state laws should "be deemed a common carrier thereof, as at common law." The Pierce Oil Corporation was incorporated in Virginia and qualified to do business in Oklahoma some years after the enactment of the pipe-line statutes. The Oklahoma Corporation Commission subsequently directed Pierce Oil to carry through its pipe line oil tendered to it by another corporation. This Court, on review of the decision of the Supreme Court of Oklahoma upholding this order as against the contention of Pierce Oil that it was not and had never held itself out to be, a common carrier, held that its entry into the state when the state law imposed a common-carrier status, barred the contention that imposition of this status was unconstitutional. This Court said (p. 128):

> * * * the contention that this order, of a tribunal to the jurisdiction of which the company voluntarily submitted itself,

> made after notice and upon full hearing, deprives it of its property without due process of law must be pronounced futile to the point almost of being frivolous. * * * A claim so similar to the one we have here that the disposition of it should have been accepted as disposing of this case was dealt with by this court in the *Pipe Line Cases,* 234 U. S. 548, 561, in a single sentence, saying: "So far as the statute contemplates future pipe lines and prescribes conditions upon which they may be established there can be no doubt that it is valid."

The above decision was not rested, even in part, on the proposition that one who has benefited from privileges conferred by a statute may not attack its constitutionality. The Court's opinion makes no reference to any benefit received by Pierce Oil by virtue of privileges conferred by the Oklahoma pipe-line statutes.

Contract carriers are not common carriers, but federal legislation prohibits "contract" carriers by motor vehicle and "contract" carriers by water from undertaking any new carriage in interstate commerce without obtaining a permit therefor from the Interstate Commerce Commission.[21] The constitutionality of such prohibition has been assumed in cases involving its application. *Noble* v. *United States,* 319 U. S. 88; *Schenley Distillers*

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[21] Secs. 209 and 309 (f) of Interstate Commerce Act, 49 U. S. C. 309, 909 (f).

Corp. v. *United States*, 326 U. S. 432. See *Cornell Steamboat Co.* v. *United States*, 321 U. S. 634. But there is at least as great a "taking" of property when interstate transportation is absolutely barred unless an administrative tribunal finds it to be "consistent with the public interest and the national transportation policy" declared in the Interstate Commerce Act as when transportation by pipe line is barred unless the carrier transports, in addition to its own goods, the goods of others. The pipe-line provisions of the Interstate Commerce Act in effect constitute a declaration by Congress that the public interest is served by confining interstate transportation by pipe line of oil and other commodities to those who are common carriers. In this connection it is significant that various states have taken a similar view and have enacted legislation which bars, directly or indirectly, transportation by pipe line of oil or petroleum products except as a common carrier.[22]

While the question is not presented in this case, it is submitted that the provisions of the Interstate Commerce Act requiring pipe-line companies to transport for others are not violative of

[22] Oklahoma Statutes Annotated, Title 52, Sec. 56 [R. L. 1910, Sec. 4309]; Deering's California General Laws (1944), Act 5632, Sec. 3; General Statutes of Kansas (Annotated) (1935), Sec. 55-501 [L. 1905, Ch. 315, Sec. 1]; Vernon's Texas Civil Statutes, Art. 6018 [Acts 1917, p. 48]. The Kansas and Texas statutes cover only transportation by pipe line of crude oil.

due process even as applied to a company engaged in pipe-line operations prior to enactment of these provisions. In *Fordham Bus Corp.* v. *United States,* 41 F. Supp. 712 (S. D. N. Y.), Circuit Judge Frank, speaking for a three-judge district court, said (p. 715) that the "basic postulate" of decisions that it is a violation of due process to convert a private carrier, by legislative fiat, into a common carrier "was destroyed by the later decision in *Nebbia* v. *New York,* 291 U. S. 502." Thus statements such as those made in *Producers Transportation Co.* v. *Railroad Commission,* 251 U. S. 228, 230–231, appear to be no longer controlling.

CONCLUSION

For the foregoing reasons, the judgment of the district court should be reversed, with directions to dismiss the appellee's complaint.

Respectfully submitted.

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APPENDIX A

Sections 1, 6 and 20 of part I of the Interstate Commerce Act, 24 Stat. 379, as amended, 49 U. S. C. 1, 6, 20, provide in part as follows:

SEC. 1 (1) That the provisions of this part shall apply to common carriers engaged in—

* * * * *

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line * * *

(c) from one State * * * to any other State * * *.

* * * * *

(3) (a) The term "common carrier" as used in this part shall include all pipeline companies; express companies; sleeping-car companies; and all persons, natural or artificial, engaged in such transportation as aforesaid as common carriers for hire. Wherever the word "carrier" is used in this part it shall be held to mean "common carrier." * * *

* * * * *

SEC. 6 (1) That every common carrier subject to the provisions of this part shall file with the Commission created by this part and print and keep open to public inspection schedules showing all the rates, fares, and charges for transportation between different points on its own route and between points on its own route and points on the route of any other carrier

by railroad, by pipe line, or by water when a through route and joint rate have been established. * * *

* * * * *

SEC. 20 (1) The Commission is hereby authorized to require annual, periodical, or special reports from carriers (as defined in this section) * * *. Such annual reports shall give an account of the affairs of the carrier or lessor in such form and detail as may be prescribed by the Commission.

(2) Said annual reports shall contain all the required information for the period of twelve months ending on the 31st day of December in each year, * * *.

(3) The Commission may, in its discretion, for the purpose of enabling it the better to carry out the purposes of this part, prescribe a uniform system of accounts applicable to any class of carriers subject thereto, and a period of time within which such class shall have such uniform system of accounts, and the manner in which such accounts shall be kept.

(4) The Commission shall, as soon as practicable, prescribe for carriers the classes of property for which depreciation charges may properly be included under operating expenses, and the rate or rates of depreciation which shall be charged with respect to each of such classes of property, classifying the carriers as it may deem proper for this purpose. * * *

* * * * *

(8) As used in this section, * * * the term "carrier" means a common carrier subject to this part, * * *.

APPENDIX B

Legislative History of Pipe-Line Amendment of Hepburn Act

The provision of the Hepburn Act, relating to pipe lines was offered as an amendment by Senator Lodge of Massachusetts on May 4, 1906 (40 Cong. Rec. 6361). Senator Foraker, of Ohio, thereupon stated (*ibid*):

> I do not want to make any opposition to the Senator's amendment, but it occurs to me that the amendment ought to be further amended, so as to provide that it shall apply only to pipe lines operated for the public. I do not understand how you would compel a man who has a private pipe line of his own to become a common carrier. * * * I think such a limitation ought to be put in the Senator's amendment by an amendment to the amendment that it shall apply to all pipe lines that are carrying for the public, and not to private pipe lines that an individual or a single corporation may have laid down and put into operation for its own benefit.

To this Senator Nelson of Minnesota replied (40 Cong. Rec. 6365):

> * * * if that amendment is adopted it will practically nullify the provision, because every one of these pipe lines can say "we refuse to do business for the public."

Senator Lodge also replied (*ibid.*):

> Mr. President, the purpose of this [the original] amendment is to bring the transportation of oil and other commodities within the interstate-commerce law. * * * But the amendment suggested by the Senator from Ohio to my amendment, to the effect that no pipe line, unless it carries for the public, shall come under this rule, will, as the Senator from Minnesota [Mr. Nelson] says, absolutely destroy the value of my amendment.

After the Lodge amendment had been agreed to in Committee of Whole (40 Cong. Rec. 6373), it was debated in the Senate (40 Cong. Rec. 6953, *et seq.*) and Senator Foraker again urged the insertion of "for the public," "for hire," "for compensation," or other similar terms. *Id.*, 6999–7000. Senator Lodge vigorously opposed such modification of the wording, and declared that such a limitation would absolutely destroy the effectiveness of the proposed legislation. He said (*id.*, 7000):

> If you put in the words "transportation for hire" or "transportation for the public" you absolutely destroy this amendment so far as its effectiveness is concerned. The method of getting the oil is, as a rule, that the Standard Oil Company or the Pure Oil Company, which are the two great carriers of oil, buy it of the well owner and carry it, and they would immediately say they were not carrying for the public; that they were carrying for themselves. That is the reason why the word "public" or "transportation for hire" put in there would immediately wreck this amendment. * * * if you put in the words

> "for the public," after "transportation," you practically kill the amendment.

Senator Culberson of Texas said (40 Cong. Rec. 7005):

> The first section of the bill as it has been amended provides in effect that the provisions of this act shall apply, among others, to *any* corporation or any person or persons engaged in the transportation of oil or other commodity by means of pipe lines, and that they shall be considered as common carriers within the meaning of this act. Nothing is left to the courts for construction, but the statute itself declares that any corporation, or any person or persons engaged in transporting oil by pipe lines—of course, as interstate commerce—are common carriers, and are declared to be such in this act of Congress, subject to the authority of this act, by the Interstate Commerce Commission.

Again, during debate on the second conference report, Senator Foraker pointed out that the provision which had been adopted by the Senate made all pipelines common carriers (40 Cong. Rec. 9107), and referred to his repeated efforts to obtain amendments, which the Senate had refused to adopt (*id.*, 9255). There was general agreement, both among supporters and opponents of the pipeline provision, as to what it was intended to accomplish.

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